UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
DIVISION OF JUDGES

C & G DISTRIBUTING COMPANY, INC.

and Case 9-CA-78875

GENERAL TRUCK DRIVERS, WAREHOUSEMEN, HELPERS, SALES AND SERVICE AND CASINO EMPLOYEES, TEAMSTERS LOCAL UNION NO. 957, AFFILIATED WITH THE INTERNATIONAL BROTHERHOOD OF TEAMSTERS

Jamie L. Ireland, Esq.,
for the General Counsel.
Ron L. Mason, Esq. & Aaron T. Tulencik, Esq.
for the Respondent Company.
John R. Doll, Esq.
for the Charging Party Union.

DECISION

Statement of the Case

JEFFREY D. WEDEKIND, Administrative Law Judge. This is another in a recent series of cases where the General Counsel is challenging current Board law regarding an employer's right to unilaterally cease dues checkoff post-contract.[1] As in the other cases, the complaint in this case alleges that the employer (here C & G Distributing Company) violated Section 8(a)(5) and (1) of the Act by doing so.[2]

A hearing on the complaint was originally scheduled in August 2012. However, on August 24, the parties filed a joint motion requesting that I issue a decision based solely on a stipulated record. Consistent with Section 102.35(a)(9) of the Board's rules, the motion included

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[1] See, e.g., *WKYC, Inc.*, 8–CA–39190, JD–60–11 (2011 WL 4543697); *Nebraskaland, Inc.*, 2–CA–39996, JD(NY)–46–11 (2011 WL 6002194); *USIC Locating Services, Inc.*, 6–CA–37328, JD–03–12 (2012 WL 76860); *WHDH-TV,* 1–CA–46744, JD(NY)–10–12 (2012 WL 1229612); and *Healthbridge Mgt*., LLC, 34–CA–12964, JD(NY)–21–12 (2012 WL 2992088).

[2] The Union filed the underlying charge on April 16, 2012, and the General Counsel issued the complaint on June 29, 2012. Jurisdiction is admitted and well established. Although the Company challenges the authority of the Acting General Counsel and current Board to prosecute and adjudicate the complaint, respectively, similar challenges have been rejected in other cases. See, e.g., *Center for Social Change, Inc*., 358 NLRB No. 24 (2012).

the parties' stipulation of facts with attached exhibits, a statement of the issues, and short statements of position by the General Counsel and the Company.

By order dated August 27, I granted the joint motion and approved the stipulation of facts. Thereafter, on October 5, the General Counsel and the Company filed briefs.

FINDINGS OF FACT

The Company sells and distributes beer and other beverages from a facility in Versailles, Ohio. Since at least March 15, 2008, Teamsters Local 957 has been the designated exclusive bargaining representative for the Company's drivers and warehousepersons at the facility pursuant to 9(a) of the Act.

The parties' most recent collective-bargaining agreement was effective from March 15, 2008 until March 15, 2012. The contract (Exh. G) contained both a union-security clause and a dues-checkoff provision. The union-security clause (art. 3) required all unit employees to become and remain union members or pay periodic dues and initiation fees to the Union after 90 days had passed from the date of the agreement or the date of hire, whichever is later. The dues-checkoff provision (art. 4) required the Company to deduct the dues and fees on a monthly basis from employees who had furnished signed authorizations, and to remit them to the Union.

Pursuant to the contractual dues-checkoff provision and the employees' signed authorizations (Exh. J), the Company regularly deducted dues from unit employees' pay and remitted the dues to the Union during the term of the agreement. And it did so again in March 2012, the last month of the agreement. Specifically, the Company deducted and remitted the dues on about March 2 and 16, respectively, and the Union received the dues on about March 19.

Since April 1, 2012, however, and continuing to date, the Company has neither deducted dues from unit employees' pay nor remitted dues to the Union. The Company's attorney first notified the Union of this by email dated April 11. The email stated "be advised that my client will no longer deduct union dues until there is a valid contract that authorizes such deductions." (Exh. I.)

In the meantime, on March 6, pursuant to timely notice previously served by the Union in early December 2011 (Exh. H), the parties met to begin negotiations over a new contract. Since the Company's April 11 email, both sides have made proposals during the negotiations with respect to including language in the new contract regarding deducting and remitting union dues. However, the Union did not request bargaining over the Company's April 11 notice that the Company would cease deducting and remitting dues until a new contract was reached.

ANALYSIS

The General Counsel argues that, as a matter of policy, employers should be required to continue dues checkoff after contract expiration to the same extent they are required to maintain wages, benefits, and other mandatory terms and conditions of employment until a new agreement or good-faith impasse. As the General Counsel concedes, however, this argument is contrary to longstanding Board precedent, specifically *Bethlehem Steel Co*., 136 NLRB 1500 (1962), and its progeny. Although the General Counsel offers various reasons why the precedent is unsound, the Board's most recent decision addressing the subject, on second remand from the Ninth Circuit, effectively reaffirmed the precedent in the absence of a three-member majority to overrule it. See *Hacienda Resort Hotel & Casino (Hacienda III)*, 355 NLRB 742 (2010).

Like *Hacienda I* and *II*, *Hacienda III* was reviewed by the Ninth Circuit at the request of the union. And this time, instead of remanding the case yet again for a rational explanation of the precedent, the court rejected the precedent outright. However, the court did so only as applied to dues-checkoff provisions that "exist as a free-standing, independent convenience to willingly participating employees." *Local Joint Executive Board of Las Vegas, Culinary Workers Local 226 v. NLRB*, 657 F.3d 865, 875 (2011). The court expressed no opinion with respect to situations, such as that here, where the expired contract also contained a union-security clause that compelled employees to join or pay dues to the union as a condition of employment.

In any event, I am bound to follow Board precedent. *Pathmark Stores, Inc*., 342 NLRB 378 fn. 1 (2004). And, as indicated by the Company, the Board has to date declined to revisit the issue. See *Hargrove Electric Co*., 358 NLRB No. 147, slip op. at 1 fn. 1 (2012). Accordingly, I find that the Company's unilateral cessation of dues checkoff in April 2012 did not violate the Act.[3]

CONCLUSIONS OF LAW

The Company's unilateral cessation of dues checkoff in April 2012, following termination of the parties' collective-bargaining agreement on March 15, 2012, did not violate Section 8(a)(5) and (1) of the Act.

Accordingly, based on the foregoing findings of fact and conclusions of law and the entire stipulated record, I issue the following recommended[4]

ORDER

The complaint is dismissed.

Dated, Washington, D.C. October 17, 2012

Jeffrey D. Wedekind
Administrative Law Judge

[3] Given this finding, it is unnecessary to address the Company's affirmative defenses.

[4] If no exceptions are filed as provided by Sec. 102.46 of the Board's Rules and Regulations, the findings, conclusions, and recommended Order shall, as provided in Sec. 102.48 of the Rules, be adopted by the Board and all objections to them shall be deemed waived for all purposes.